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Docket No.: _____ ~~OFFICE OF THE CLERK~~
United States Court of Appeal For the Ninth Circuit Case
No. 04-16200

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2004

FRED KNOX-Petitioner

v.

JOHN E. POTTER, ET. AL.,-Respondents

**ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEAL FOR
THE NINTH CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether or not the United States Court of Appeal for the Ninth Circuit, by its decision as submitted May 9, 2005, has denied the Petitioner due process of law, as prohibited against by the Fifth Amendment to the Constitution of the United States, the Court of Appeal's May 9, 2005 decision being a decision about an important federal question that has been decided in a way that conflicts with relevant decisions of other Appellate Courts as well as the United States Supreme Court?

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LIST OF PARTIES

JOHN E, POTTER, United States Postmaster General,
UNITED STATES POSTAL SERVICE, UNITED STATES
POSTAL SERVICE'S SAN MATEO INFORMATION
SERVICE CENTER, RICH LENA, GUY ONO, VIRGINIA
LABSON

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OPINIONS BELOW

The opinion of the United States Court of Appeal, from which the Petitioner petitions this United Supreme Court for a Writ of Certiorari, is included and attached hereto as **APPENDIX A.**

JURISDICTION

This is a Petition for a Writ of Certiorari to the United States Court of Appeal for the Ninth Circuit. The judgment of the Court of Appeal was entered on May 16, 2005. Jurisdiction is invoked under 28 U.S.C.1254(1).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V of the Constitution of the United States reads in pertinent part, "No person....shall be deprived of life, liberty, or property, without due process of law;..."

Fifth Amendment of the Constitution of the United States.

"Cases in the courts of appeals may be reviewed by the Supreme Court...., By writ of certiorari granted upon the petition of any party to any civil or criminal case,...". 28 U.S.C. 1254(1).

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STATEMENT OF THE CASE

Proceedings Below

The Petitioner sought EEO counseling with regard to an initial claim of racial discrimination as against the United States Postal Service, the United States Postal Service's San Mateo Information Center, and a number of Postal Service employees, in 1995. The Petitioner filed his first complaint of racial discrimination with the EEO office in November of 1995. The EEO completed its investigation and notified the Petitioner that he had the right to request a hearing. The Petitioner's charges with regard to his first complaint were heard before an Administrative Law Judge on January 9, 1997.

In 1996, and concurrently with consideration of his initial charge as filed by the Petitioner against the United States Postal Service, the Postal Service's San Mateo Information Center, and named employees, the Petitioner requested of the Equal Employment Opportunity Commission that a subsequent complaint of racial discrimination and retaliation, filed by the Petitioner against named respondents be consolidated with the Petitioner's initial complaint for hearing. Although the Petitioner argued before the Administrative Law Judge that his second complaint was derivative of and directly related to the Petitioner's first complaint, the Judge denied the Petitioner's request for consolidation.

In March of 1998, the Petitioner, a layperson, representing himself In Pro Se, filed a Complaint for Damages as based upon Racial Discrimination and Retaliation in the United States District Court for the Northern District of California. Not later than August of 1998, the Petitioner informed the

United States District Court for the Northern District of California that he also desired that the violation, by the named defendants, of his rights as a Veteran also be considered by the Court

By July of 1999, the Petitioner had filed not less than three separate lawsuits, In Pro Se, in the United States District Court for the Northern District of California as based upon Racial Discrimination, Discrimination because of Disability, and Retaliation, derivative of the Petitioner's initial claims before the United States Equal Employment Opportunity Commission. By the year 2004, the Petitioner had filed at least five law suits in the U.S. District Court as based upon retaliatory acts that had been taken against him by Postal Service employees.

In every case, apart from technical grounds, to include improper service of process, the District Court held that the Petitioner had not established that he had been discriminated against because of his race or sex, that the Petitioner had not established that he had been sexually harassed or subjected to a hostile work environment, and that the Petitioner had not shown any retaliation. The Court also repeatedly held that the Petitioner had failed to file necessary administrative claims, had failed to properly pursue his grievances through his union or seek his union's assistance at all, and that the Petitioner had demonstrated no triable issue.

In all prior cases brought against the Postal Service and other named defendants by the Petitioner since the Petitioner's first EEO charge and subsequent lawsuit, the court has repeatedly decided to overlook the Petitioner's essential claim, that being that every time that the Petitioner filed a claim or charge with the U.S. Equal Employment Opportunity Commission, the Postal Service, by and through

its employees, would take an adverse employment action against him. The Petitioner's claims, since the submission of Petitioner's first lawsuit, have, as in this case, all had to do with the retaliation that he is subjected to whenever he attempts to assert rights and privileges due him as a Postal Service employee and a Veteran.

Herein, the Petitioner has appealed from the decision of the U.S. District Court of Northern California to the United States Court of Appeal for the Ninth Circuit, wherein, as in the District Court, the doctrine of res judicata has, once again, been wrongfully applied.

Holding of Court of Appeal

On May 9, 2005, reviewing the Petitioner's case de novo, the Court of Appeal for the Ninth Circuit affirmed the decision of the District Court, the Court of Appeal deciding that the defendants had established an identity of claims arising from the same transactional nucleus of facts, that the District Court had properly granted defendants' motion for summary judgment and that the case had been decided on its merits, and, that res judicata barred all of the Petitioner's causes of action between the same parties on the same causes of action. (APPENDIX A.).

The Petitioner argues that he has been denied due process of law by both the United States District Court and by the Court of Appeal.

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REASONS FOR GRANTING PETITION

"Cases in the courts of appeals may be reviewed by the Supreme Court...., by writ of certiorari granted upon the petition of any party to any civil or criminal case,..." 28 U.S.C. 1254(1).

Because of the importance of questions involved, and because of different conclusions by Courts of Appeals, writs of certiorari will be granted. Shapiro v. United States, 235 US 412, 59 L.Ed. 291, 35 S.Ct. 122 (1914).

Res Judicata In The Present Case

Res judicata requires that (1) a prior adjudication involves the same claim as the latter suit, (2) the prior adjudication reached a final judgment on the merits, and, (3) the prior adjudication involved the same parties or their privies.

DiLorento v. Downey Unified School Dist. Bd. Of Educ., 196 F.3d 958, certiorari denied 120 S.Ct. 1674, 529 U.S. 1067, 146 L.Ed.2d 483 (1999). Res judicata bars all grounds for recovery which could have been asserted, whether they were or not, in the prior lawsuit, if the prior lawsuit concluded in a judgment on the merits. Sexton v. Chino Valley Independent Fire District, 7 Fed. Appx 660, certiorari denied 122 S.Ct. 807, 151 L.Ed.2d 693 (2001).

In all prior cases brought against the Postal Service and other named defendants by the Petitioner since the Petitioner's first EEO charge and subsequent lawsuit, the court has repeatedly decided to overlook the Petitioner's essential claim, that being that every time that the Petitioner filed a claim or charge with the U.S. Equal Employment Opportunity Commission, the Postal Service, by and through its employees, would take an adverse employment action